

No. 15655

United States
Court of Appeals
for the Ninth Circuit

VIRGIL D. DARDI, Individually and as Executor
of the Estate of UMBERTO DARDI,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILED
SEP 13 1957

PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

PHILLIPS, AVAKIAN and JOHNSTON,
J. RICHARD JOHNSTON, ESQ.,

Financial Center Building,
Fourteenth at Franklin Streets,
Oakland, 12, California,

For Appellant.

CHARLES H. RICE,
Assistant U. S. Attorney General;

LEE A. JACKSON,
Chief, Appellant Section, Dept. of Justice,
Washington, 25, D.C.,

LLOYD H. BURKE, ESQ.,
United States Attorney;

C. ELMER COLLETT,
Assistant United States Attorney,
Post Office Building,
San Francisco, California,

For Appellee.



In the United States District Court for the Northern
District of California, Southern Division

Civil No. 34297

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE MISSION COMPANY; VIRGIL D. DARDI,
Individually and as Executor of the Estate of
UMBERTO DARDI; and OLGA PAULA as
Trustee of Trust for JOSEPH DARDI and as
Trustee of Trust for MARY CLAIRE ELE-
VITA DARDI,

Defendants.

COMPLAINT

The United States of America, by Lloyd H. Burke,
United States Attorney for the Northern District of
California, for its complaint against the above-named
defendants alleges as follows:

I.

That at all times hereinafter mentioned the plain-
tiff was and now is a sovereign body politic.

II.

That this is an action arising under the laws of the
United States providing for the internal revenue
and the collection thereof.

III.

That this action has been authorized by the Attor-
ney General of the United States at the request of the
Commissioner of Internal Revenue.

IX.

On information and belief, that on or about June 30, 1943, defendant Virgil D. Dardi and Umberto Dardi, each as owner of fifty per cent of the stock of the defendant The Mission Company, received as a distribution from The Mission Company all of its assets which had a value in excess of the tax liability asserted herein without giving anything of value in return therefore at a time when the defendant The Mission Company either was insolvent or by virtue of the said distribution was rendered insolvent.

X.

On information and belief, that subsequent to June 30, 1943, defendant Virgil D. Dardi formed a partnership or other business venture with Umberto Dardi, and transferred thereto the assets received from the defendant The Mission Company, as specified in paragraph IX, and thereafter used such assets in the operation of two businesses, to wit; Cigar Box Restaurant and All-American Creamery, both being located within the city of San Francisco, California.

XI.

On information and belief, that subsequent to June 30, 1943, defendant Virgil D. Dardi, transferred his interest in the partnership or other business venture alleged in paragraph X, or in the assets received from the defendant The Mission Company, as specified in paragraph IX, to two trusts for his children, to wit: Trust for Joseph Dardi and Trust for Mary Claire Elevita Dardi, without receiving anything of value therefor.

XII.

On information and belief, that Umberto Dardi died on or about April, 1948.

XIII.

On information and belief, that defendants Virgil D. Dardi, as the executor of the estate of Umberto Dardi, and Olga Paula, as the trustee of the trusts for Joseph and Mary Claire Elevita Dardi, are operating the Cigar Box Restaurant and the All-American Creamery as partners or co-venturers.

XIV.

On information and belief that the parties named herein are all of the persons who have or claim to have any interest in the property described herein.

XV.

That the claims and tax liens of the plaintiff, United States of America, are entitled to priority of payment out of the property described herein over the interests of all other parties in the said property.

Wherefore, the plaintiff prays:

1. That the Court enter judgment in favor of the United States of America against The Mission Company in the amount of \$15,983.60, plus interest and costs as provided by law.

2. That the Court adjudge, order and decree that the property and things of value taken over by defendant Virgil D. Dardi and by Umberto Dardi from the defendant The Mission Company, constitute a trust fund for the payment of the taxes and interest

asserted herein, and that the said property and things of value be applied to the payment of the said taxes and interest. Further, that if the application of the said property or things of value in payment of the taxes and interest asserted herein does not fully discharge the claim for the said taxes and interest, then the defendant United States of America to have judgment against Virgil D. Dardi, individually and as executor of the estate of Umberto Dardi, in the amount of the said taxes and interest still remaining due.

3. That this Court adjudicate all matters involved herein and finally determine the merits of all claims to and liens upon the property and rights to property described herein, and decree that the lien of the plaintiff is prior, senior and superior to any and all liens upon the property or rights to property described herein and that unless the taxes described herein are immediately paid, that the said property be sold by the proper officer of this Court and the proceeds of such sale be distributed first in satisfaction of plaintiff's lien for taxes, interest and penalties.

4. That the plaintiff have such other and further relief as to the Court may seem just and proper in the premises, together with the costs and disbursements of this action.

/s/ LLOYD H. BURKE,

United States Attorney,
Attorney for Plaintiff.

[Endorsed]: Filed December 15, 1954.

[Title of District Court and Cause.]

AMENDED ANSWER OF DEFENDANT
VIRGIL D. DARDI, INDIVIDUALLY

Now comes the defendant Virgil D. Dardi, individually, and in answer to the complaint on file herein admits, denies and alleges as follows:

I.

Admits the allegations of Paragraphs I, II, III, IV, V, VI, VII and XII.

II.

In answer to Paragraphs VIII, XIV, and XV, states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in those paragraphs.

III.

In answer to Paragraph IX, admits that assets of The Mission Company were transferred to him and Umberto Dardi, but states that he is without knowledge or information sufficient to form a belief as to the truth of the allegation that such assets had a value in excess of the tax liability asserted in the complaint, or the allegation that the alleged distribution was made at a time when The Mission Company either was insolvent or that by virtue of said distribution it was rendered insolvent; and denies the other allegations of said paragraph.

IV.

In answer to Paragraph X, denies the allegation that assets were received from The Mission Company "as specified in paragraph IX," and admits the other allegations of said paragraph.

V.

Denies the allegations of Paragraph XI.

VI.

In answer to Paragraph XIII, denies the allegation that this defendant or any defendant is presently operating the All-American Creamery as partners, co-venturers, or otherwise, or has so operated the All-American Creamery since about 1943; and admits the other allegations of said paragraph.

As a first affirmative defense, this defendant alleges as follows:

VII.

That at the time assets of The Mission Company were transferred to him, said corporation was indebted to this defendant in the sum of \$13,983.12, and said assets were transferred to this defendant and received by him as payment or partial payment of said indebtedness and not as a distribution to him as a shareholder.

As a second affirmative defense, this defendant alleges as follows:

VIII.

That the right of action set forth in the complaint did not accrue within six years next before the commencement of this action, and this defendant did

not agree to any extension of the period of limitations applicable to this action.

Wherefore, this defendant prays that plaintiff take nothing by this action and that he be dismissed hence with his costs.

Dated: February 20, 1956.

PHILLIPS, AVAKIAN &
JOHNSTON,

By /s/ J. RICHARD JOHNSTON,
Attorneys for Defendant.

Affidavit of service by mail attached.

[Endorsed]: Filed February 21, 1956.

[Title of District Court and Cause.]

AMENDED ANSWER OF DEFENDANT VIR-
GIL D. DARDI AS EXECUTOR OF THE
ESTATE OF UMBERTO DARDI

Now comes the defendant Virgil D. Dardi as Executor of the Estate of Umberto Dardi, and in answer to the complaint on file herein admits, denies and alleges as follows:

I.

Admits the allegations of Paragraphs I, II, III, IV, V, VI, VII and XII.

II.

In answer to Paragraphs VIII, XIV and XV, states that he is without knowledge or information

sufficient to form a belief as to the truth of the allegations stated in those paragraphs.

III.

In answer to Paragraph IX, admits that assets of The Mission Company were transferred to the defendant Virgil D. Dardi, individually, and to Umberto Dardi, but states that he is without knowledge or information sufficient to form a belief as to the truth of the allegation that such assets had a value in excess of the tax liability asserted in the complaint, or the allegation that the alleged distribution was made at a time when The Mission Company either was insolvent or that by virtue of said distribution it was rendered insolvent; and denies the other allegations of said paragraph.

IV.

In answer to Paragraph X, denies the allegation that assets were received from The Mission Company "as specified in Paragraph IX," and admits the other allegations of said paragraph.

V.

Denies the allegations of Paragraph XI.

VI.

In answer to Paragraph XIII, denies the allegation that this defendant or any defendant is presently operating the All-American Creamery as partners, co-venturers or otherwise, or has so operated the All-American Creamery since about 1943; and admits the other allegations of said paragraph.

As a separate affirmative defense, this defendant alleges as follows:

VII.

That the right of action set forth in the complaint did not accrue within six years next before the commencement of this action, and this defendant did not agree to any extension of the period of limitations applicable to this action.

Wherefore, this defendant prays that plaintiff take nothing by this action and that he be dismissed hence with his costs.

Dated: February 20, 1956.

PHILLIPS, AVAKIAN &
JOHNSTON,

By /s/ J. RICHARD JOHNSTON,
Attorneys for Defendant.

Affidavit of service by mail attached.

[Endorsed]: Filed February 21, 1956.

[Title of District Court and Cause.]

PRETRIAL ORDER

The above-entitled action having come on for pretrial conference on Wednesday, February 15, 1956, the following facts were agreed to by all the respective parties, and such facts are no longer in issue:

1. At all times hereinafter mentioned the plaintiff was, and now is, a sovereign body politic.

2. This is an action arising under the laws of the United States providing for the internal revenue and the collection thereof.

3. This action has been authorized by the Attorney General of the United States at the request of the Commissioner of Internal Revenue.

4. The Mission Company is a corporation organized under the laws of the State of California and at all times relevant to this action was doing business at 2200 Mission Street, San Francisco, California.

5. The defendants, Virgil D. Dardi and Olga Paula, are residents of San Francisco, California, or other places within the jurisdiction of this Court.

6. The Mission Company was incorporated under the laws of the State of California in January, 1941, under the name of Dardi and Company; in April, 1941, said corporate name was changed to R. J. Howell, Inc.; in November, 1942, said corporate name was changed to The Mission Company.

7. The Mission Company filed corporate income tax returns for the calendar year 1942 and for the period January 1, 1943, to June 30, 1943; said returns were filed by Virgil D. Dardi as president and Umberto Dardi as vice president.

8. Income and excess profits taxes were assessed against The Mission Company as follows:

Year	Tax	Amt. Assessed	Post War Credit	Amt. Owed
1942	E.P.	\$8,117.06	\$811.71	\$ 7,305.35
1942	I.T.	14.50		369.96
	Int.	3.47		
	DVEP	283.99		
	Int.	68.00		
1943	E.P.	6,305.04	630.50	5,674.54
1943	I.T.	726.05		2,633.75
	Int.	130.28		
	DVEP	1,507.01		
	Int.	270.41		
				<hr/> \$15,983.60

The assessment list pertaining to the above tax liabilities was signed by the Commissioner of Internal Revenue on October 10, 1947, and received by the Collector of Internal Revenue at San Francisco on October 13, 1947, on which date a lien of the plaintiff, United States of America, arose on all property and rights to property of The Mission Company; said assessment was within the applicable statute of limitations for assessment of such taxes as duly extended by Virgil D. Dardi as president of The Mission Company; notice and demand was made on The Mission Company on October 17, 1947; no part of the \$15,983.60, plus interest, due to the United States of America for the above taxes has been paid; waivers were executed by Virgil D. Dardi as president of The Mission Company on October 21, 1952, extending the time of collection of the above tax liabilities by distraint or by proceedings in court until December 31, 1956; notices of Federal tax liens were filed pursuant to Section 3672 of the Internal Revenue Code of 1939 for the tax liabilities asserted

herein in the County of San Francisco, California, on January 9, 1948, in the amount of \$19,491.39.

9. No waiver extending the time of collection of the above tax liabilities by distraint or by proceedings in court has ever been executed by Virgil D. Dardi, either individually or as executor of the estate of Umberto Dardi, or by Olga Paula as trustee of the trust for Joseph Dardi or as trustee of the trust for Mary Claire Elevita Dardi.

10. On or about June 30, 1943, defendant Virgil D. Dardi and Umberto Dardi each received from The Mission Company one-half of its assets. Subsequent to June 30, 1943, defendant Virgil D. Dardi and Umberto Dardi formed a partnership, transferred thereto the assets which they had received from the defendant, The Mission Company, and thereafter used such assets in the operation of two businesses, to wit: Cigar Box Restaurant and All-American Creamery, both being located within the City of San Francisco, California.

11. On or about April 30, 1944, Virgil D. Dardi transferred his interest in the partnership known as "The Mission Co." to Eugene Engle. On or about January 1, 1945, Eugene Engle in turn transferred such interest to John Clifton Ernst, in trust for the benefit of Joseph Dardi and Mary Claire Elevita Dardi.

12. Umberto Dardi died on or about April, 1948.

13. The defendant, Virgil D. Dardi, as executor of the estate of Umberto Dardi, and the defendant,

Olga Paula, as trustee of the trusts for Joseph and Mary Claire Elevita Dardi, are operating the Cigar Box Restaurant as partners or co-venturers.

It was further agreed among the respective parties to this action that the following questions are in issue:

1. Whether the instant suit has been timely commenced against the defendants, Virgil D. Dardi, individually and as executor of the estate of Umberto Dardi, and Olga Paula as trustee for the trusts for Joseph Dardi and Mary Claire Elevita Dardi.

2. Whether the transfer of assets from The Mission Company to Virgil D. Dardi and Umberto Dardi was for good and valuable consideration.

3. Whether the transfer of assets from The Mission Company to Virgil D. Dardi and Umberto Dardi was at a time when the defendant, The Mission Company, was either insolvent, or by virtue of said transfer of assets was thereby rendered insolvent.

4. The value of the assets transferred from The Mission Company to Virgil D. Dardi and Umberto Dardi.

5. Whether the transfer of the interest of Virgil D. Dardi in the partnership referred to as the "Cigar Box Restaurant" to Eugene Engle was a bona fide transfer for good and valuable consideration.

6. Whether the transfer of the interest of Eugene Engle in the partnership referred to as the "Cigar Box Restaurant" to the trustee for the trusts for Joseph Dardi and Mary Claire Elevita Dardi was a bona fide transfer for good and valuable consideration.

/s/ MICHAEL J. ROCHE,
United States District Court
Judge.

Approved:

/s/ J. RICHARD JOHNSTON,
Attorney for Defendants.

/s/ JOSEPH O. GREAVES,
Attorney for Plaintiff.

[Endorsed]: Filed March 6, 1956.

[Title of District Court and Cause.]

MOTION FOR JUDGMENT ON THE
PLEADINGS

Defendants Virgil D. Dardi, both individually and as executor of the estate of Umberto Dardi, and Olga Paula as trustee of trust for Joseph Dardi and as trustee of trust for Mary Claire Elevita Dardi, move for judgment on the pleadings in their favor on the ground that this action is barred by the statute of limitations, since it was commenced more than six years after the right of action accrued and

said defendants did not agree to any extension of the applicable period of limitations.

Dated: March 26, 1956.

PHILLIPS, AVAKIAN &
JOHNSTON,

By /s/ J. RICHARD JOHNSTON,
Attorneys for Defendants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 28, 1956.

[Title of District Court and Cause.]

ORDER

Upon the authority of the case of United States vs. City of New York, et al., S.D.N.Y., 134 F. Supp. 374, the reasoning of which case appears to the Court to be sound, it is hereby ordered that the motion of the defendant for judgment on the pleadings be, and the same hereby is, denied.

Dated: April 13, 1956.

/s/ O. D. HAMLIN,
United States District Judge.

[Endorsed]: Filed April 13, 1956.

[Title of District Court and Cause.]

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto, and their respective counsel of record, that the following facts should be taken as true :

(1) The defendant corporation, The Mission Company, was incorporated in January, 1941, under the name of Dardi & Co., which name was changed to R. J. Howell, Inc., in April, 1941, which name was changed to The Mission Company in November, 1942. Said corporation had an authorized capital of 5,000 shares of \$1.00 par value stock, but no stock in said corporation was ever issued. The defendant Virgil D. Dardi, was the president and Umberto Dardi was the vice president. The corporation owned and operated a restaurant known as the Cigar Box Restaurant.

(2) Attached hereto as Exhibit A is a copy of a balance sheet of the corporation as of June 30, 1943, which was prepared from the corporate books. Attached hereto as Exhibit B is a copy of a balance sheet of said corporation which was filed with its corporation income and declared value excess profits tax return for the calendar year 1942, which return was filed by Virgil D. Dardi as president and by Umberto Dardi as vice president of The Mission Company.

(3) On June 30, 1943, defendant Virgil D. Dardi and Umberto Dardi each received from The Mission

Company one-half of its assets and said Virgil D. Dardi and Umberto Dardi assumed the liabilities of said corporation as shown on its books at that date. On June 30, 1943, defendant Virgil D. Dardi and Umberto Dardi formed a partnership known as The Mission Co., to which they transferred the assets which they had received and the liabilities which they had assumed from the defendant The Mission Company. Said partnership thereafter continued to operate the business known as the Cigar Box Restaurant.

(4) Attached hereto as Exhibit C is a copy of a balance sheet of said partnership, prepared from its books as of June 30, 1943.

(5) No consideration passed from said partnership to said corporation for the transfer of the assets of the latter to the former, except as the assumption of the liabilities above referred to may constitute such a consideration.

(6) On or about April 30, 1944, Virgil D. Dardi transferred his interest in the partnership known as The Mission Co. to Eugene Engle. This transfer was evidenced by a bill of sale dated April 28, 1944, a photocopy of which is attached hereto, as Exhibit D. In consideration for this partnership interest, Eugene Engle executed and delivered to Virgil D. Dardi his promissory note dated April 30, 1944, in the sum of \$150,000.00, a photocopy of which is attached hereto as Exhibit E. This note provided for installment payments as follows:

\$27,000 on or before December 31, 1944;
\$30,000 on or before December 31, 1945;
\$30,000 on or before December 31, 1946;
Balance on or before December 31, 1947.

(7) Eugene Engle paid Virgil D. Dardi the sum of \$27,900.00 in 1944, in payment of the first installment due on said note, and Virgil D. Dardi reported the receipt of this payment in his individual Federal income tax return for the year 1944.

(8) On or about January 1, 1945, Eugene Engle transferred his 50% partnership interest in The Mission Co. to John Clifton Ernst, as trustee for Mary Claire Dardi and Joseph Dardi, the two minor children of Virgil D. Dardi. This transfer was evidenced by a trust indenture which was duly executed by the parties, and a photocopy of which is attached hereto as Exhibit F. Pursuant to this trust indenture, the trustee made payments to Virgil D. Dardi in the amounts set forth below, and Virgil D. Dardi reported the receipt of such payments in his individual Federal income tax returns for the respective years in which the payments were made:

1945	\$21,169.06
1946	\$38,175.00

(9) On or about May 6, 1947, Virgil D. Dardi executed a release, discharging Eugene Engle from any further liability under his note of April 30, 1944. A photocopy of this release is attached hereto as Exhibit G.

(10) If Virgil D. Dardi and Eugene Engle were called to testify as witnesses in this suit, they would testify that they participated in these transactions in good faith and that the transactions were real, not sham.

Dated this 2nd day of April, 1957.

LLOYD H. BURKE,
United States Attorney;

/s/ LYNN J. GILLARD,

By /s/ JOSEPH O. GREAVES,
Attorney, Office of Regional Counsel, Internal
Revenue Service, Attorneys for Plaintiff.

/s/ J. RICHARD JOHNSTON,
Attorneys for All Defendants.



THE MISSION CO., INC.
 DEPARTMENTAL BALANCE SHEET
 JUNE 30, 1943.

CURRENT ASSETS:	CREAMERY		ELIMINATIONS		COMBINED
	RESTAURANT	CREAMERY	DR	CR	
CASH					
CASH ON HAND	\$5443	\$797			\$5840
CHANGE FUND	5000	4000			9000
SAVINGS ACCOUNTS	74314				74314
COMMERCIAL DEPOSITS	7444	13460			5676
TOTAL	\$77713	\$13875			\$66740
MERCHANDISE INVENTORY	274280	45000			319080
DEPOSITS	710000	55050			765050
A/R - CREAMERY	726461		726461		-
MARKETABLE SECURITIES	44450				44450
TOTAL CURRENT ASSETS	1479451	728307			1496280
FIXED ASSETS:					
FURN. FIXT. & EQUIP	\$1173413	710000			1883413
LESS: RESERVE FOR DEPR.	295071	181873			476944
	878341	528127			1406468
AUTO	19135	-			19135
TOTAL FIXED ASSETS	1074035	528127			1602162
OTHER ASSETS:					
INVESTMENT IN GENE'S	700000				700000
GOODWILL	54224				54224
TOTAL ASSETS	\$3483814	\$766434			\$3813748
LIABILITIES & CAPITAL					
LIABILITIES:					
ACCOUNTS PAYABLE	\$836953	\$74007	736461		\$911499
NOTES PAYABLE	775344				775344
ACCRUED PAYROLL	700165	700165			704780
V. DARDI	138076				138076
ACCURED TAXES	162167	72858			192025
TOTAL LIABILITIES	7099749	367877			7511165
CAPITAL LOAN:					
V. DARDI-INVESTMENT	1044454	387260			1431714
" " WITHDRAWALS	-	33500			33500
SURPLUS-1-1-43	\$51746	52634			44980
PROFIT OR LOSS	1721	17301			26421
SURPLUS-6-30-43	139611	44477			184088
TOTAL LIABILITIES & CAPITAL	\$3483814	\$766434			\$3813748

(WITHOUT AUDIT)



Cash
 deposits
 Merchandise donations
 Furniture and fixtures
 Reserve for Depreciation
 Assets & Liabilities - all American Company
 Automobiles
 Investments
 Investments - Reserve
 Goodwill

Total

Accounts payable
 Accounts payable - U. S. Bonds
 Accounts payable - all other
 Notes payable
 Accounts payable - all other
 Accounts payable - all other
 Accounts payable - all other

Accounts payable
 California - all other
 U. S. Bonds - all other
 U. S. Bonds - all other
 U. S. Bonds - all other
 U. S. Bonds - all other
 U. S. Bonds - all other

Total

1. Includes payable to Capital Ave. Ar
 all American Company

817470
 745460
 319080
 1983613
 231661
 151925
 44680
 5000 -
 511345

405000

1159960

138000

61760

77544

20480

7740

4141

200 -

19529

6670

< 835 -

670903

670904

401000

SHIT "C"

120

EXHIBIT D

Bill of Sale

Know All Men by These Presents, that I, the undersigned Virgil Dardi, of the City and County of San Francisco, State of California, do hereby sell, assign, and set over as of this day for good and valuable consideration to Eugene Engel, of the City and County of San Francisco, State of California, all of my right, title and interest in and to the business known and designated as the Mission Co., being a club and restaurant conducted at 2202 Mission Street, San Francisco, California, and do likewise by these presents sell, assign, and transfer and set over to the said Eugene Engel all of my right, title and interest in and to said furnishings and fixtures, stock in trade, accounts receivable, leases and all other personal property and equipment now located in the said premises occupied by the said club and restaurant therein described.

In Witness Whereof, I have set my hand on this 28th day of April, 1944.

/s/ VIRGIL DARDI.

EXHIBIT E

\$150,000.00

San Francisco, California
April 30, 1944

For Value Received, I promise to pay to Virgil D. Dardi or order, at San Francisco, California, the principal sum of One Hundred Fifty Thousand and No/100 (\$150,000.00) Dollars in lawful money

of the United States, with interest thereon in lawful money of the United States from date hereof and until paid, at the rate of three (3) per cent per annum.

And I further promise to pay said principal sum and interest as aforesaid, in installments as follows, to wit: Twenty-Seven Thousand Nine Hundred (\$27,900.00) Dollars thereof on or before the 31st day of December, 1944; Thirty Thousand Dollars (\$30,000.00) thereof on or before the 31st day of December, 1945; Thirty Thousand (\$30,000.00) Dollars thereof on or before the 31st day of December, 1946, and the balance, together with interest thereon, on or before the 31st day of December, 1947.

And I agree that in case of default in the payment of said interest as the same shall become due, then such interest so in default shall be added to and become a part of the principal and thereafter bear the same rate of interest; and at any time during default in the payment of said interest or in the payment of any installment of principal in the manner aforesaid, the entire unpaid balance of said principal and the interest thereon, shall, at the option of the holder of this note, be due and payable without notice.

/s/ E. J. ENGLE.

EXHIBIT F

Trust Indenture

This Trust Indenture, made and entered into this first day of January, 1945, by and between Eugene Engle, of the City and County of San Francisco,

State of California, hereinafter called the "Donor," first party hereto, and John Clifton Ernst, of the City and County of San Francisco, State of California, hereinafter called the "Trustee," second party hereto.

Witnesseth

That the Donor, for and in consideration of the agreement of the Trustee to undertake and perform the duties of Trustee as hereinafter provided, does hereby give, grant, convey, transfer, assign, set over and deliver to said Trustee and to his successor or successors as Trustee hereunder, as a gift to and for the benefit of Mary Claire Dardi and Joseph Dardi, all his right, title and interest of every kind and character in and to that certain partnership composed of Umberto Dardi and himself, doing business under the firm name and style of Mission Company, which interest Donor represents to be an undivided one-half therein as reflected in the audited Asset and Liability Statement of the partnership dated December 31, 1944, attached hereto and marked Exhibit "A," and which said interest is subject to an indebtedness in the sum of \$122,100.00 owing by Donor to Virgil D. Dardi.

In Trust, Nevertheless, for the term and for the uses and purposes hereinafter set forth:

First: Immediately after the creation of the trusts provided for herein or as soon thereafter as is possible, the Trustee shall assume, as Trustee only, the present existing indebtedness in the sum of \$122,-

100.00 owing from Donor to Virgil D. Dardi, as evidenced by that certain promissory note dated April 30, 1944, executed by the Donor to Virgil D. Dardi, in the face amount of \$150,000.00, together with interest thereon at the rate of three per cent (3%), and shall make every effort to secure from said Virgil D. Dardi the release of Donor from such indebtedness and from any and all liability which he may have or now has by reason thereof to said Virgil D. Dardi, and, as such Trustee, shall make, execute and deliver such evidences of indebtedness, notes, or other documents, and give such security therefor as the Trustee shall in his sole discretion deem necessary to effect such release. In carrying out the transactions provided for in this paragraph the Trustee shall incur no personal liability.

Second: The Trustee is authorized to permit the interest of Donor in the said partnership to remain employed in the business of such partnership upon such terms and conditions, either those by law implied or as may be expressly agreed upon with the remaining partner, as the Trustee may deem advisable, and said Trustee shall not be personally liable for any loss incurred in the conduct of such business not due to wilful default or misconduct. Trustee is further empowered to authorize the remaining partner in conjunction with the Trustee, as such Trustee, to continue to carry on and conduct the business of such partnership to the extent permitted by law. Should the Trustee at any time

determine in his sole and absolute discretion that the business cannot be continued to the advantage of the trust estates, he may sell or dispose of the same in the manner deemed by him to be for the best interest of the trust estates. In this connection, if it be deemed expedient to change the form of business from partnership to corporation or to any other form of business, the Trustee shall have full power to cause the interest of the Donor in and to the partnership and all property and assets used in connection therewith to be transferred to a corporation, the shares of which shall be held by the Trustee subject to the provisions of this indenture; provided, however, that should it become necessary for the Trustee to sell or dispose of all or any part of the shares of stock for the purpose of carrying out the provisions of the trusts, Trustee shall first offer such shares as are to be sold or disposed of to Virgil D. Dardi at the then fair market value of such shares.

Third: The Trustee shall divide the trust estate into two equal shares, setting aside one such share for Mary Claire Dardi and one such share for Joseph Dardi, and shall collect and receive the income of each of said trusts and the rents, issues and profits thereof and therefrom and shall apply the net income and principal of each trust estate as follows:

(a) From the net income thereof the Trustee shall first pay the indebtedness to which the principal of the trusts herein created is subject in the manner and as called for under the terms and pro-

visions of that certain promissory note dated April 30, 1944, executed by Donor to Virgil D. Dardi, or of such instrument or instruments as may be substituted therefor by the Trustee as such Trustee. The remainder of the net income, if any, or, should such indebtedness be fully discharged prior to the termination of the trusts, as herein provided, the entire net income, shall be paid to Mary Claire Dardi and Joseph Dardi, share and share alike.

(b) Upon the death of said Virgil D. Dardi, these trusts, subject to their or its possible continuance in trust as hereinafter provided, shall cease and terminate, and each trust estate, subject, however, to the remaining indebtedness, if any, to said Virgil D. Dardi, shall thereupon vest in, go and be transferred to Mary Claire Dardi and Joseph Dardi, or to the surviving issue, if any, of either of them then deceased by right of representation, or to the survivor of them should either of them be deceased leaving no issue, and should both be then deceased, neither of them leaving issue them surviving, then to their respective heirs at law, provided, however, that should either of the said beneficiaries become entitled to his or her respective trust estate before having attained the age of thirty years, then and in that event such share shall be continued in trust for such beneficiaries, under the following terms:

1. During the continuance of each such trust, the Trustee shall pay to or expend for and on behalf of the beneficiary whose trust is being continued the remainder of the net income, if any, of the trust estate, derived therefrom, after payment of the in-

debtedness herein referred to or the entire net income derived from such share should such indebtedness be fully discharged.

2. Each trust shall cease and terminate when the beneficiary for whose use and benefit such trust is being continued shall have attained the age of thirty years, or upon the death of any beneficiary prior to attaining that age, and thereupon such trust estate shall vest in, go and be transferred to that beneficiary should that beneficiary then survive, or to the then surviving issue, if any, of that beneficiary by right of representation, should that beneficiary be then deceased. But should no issue of that beneficiary then survive, and if the other said beneficiary shall not have attained the age of thirty years, it shall be added to and become a part of the trust being administered for that beneficiary, but if the other beneficiary shall have attained the age of thirty years then the said trust estate shall vest in, go and be transferred to said beneficiary should that beneficiary then survive, or to the surviving issue, if any of that beneficiary by right of representation, should that beneficiary be then deceased. And should both of said beneficiaries be then deceased, neither of them leaving issue them surviving, then to the respective heirs at law of each beneficiary, provided, however, should the survivor become entitled before having attained the age of thirty years to an additional share of the trust estate by reason of the death of one of said beneficiaries, then and in that event such ad-

ditional share shall be added to the trust estate being continued in trust for such surviving beneficiary, provided, further, however, that no trust herein created shall extend beyond the death of the last to die of Virgil D. Dardi, Mary Claire Dardi, and Joseph Dardi.

(c) Upon the death of any beneficiary theretofore receiving income payments hereunder, there shall be no apportionment of any income then accrued or accumulated from the trust estates but not yet paid between the heirs or legatees of such beneficiary and the beneficiary or beneficiaries next entitled to receive income and/or principal of the trust estates hereunder, but any and all such accrued, accumulated and unpaid income shall be paid to the beneficiary or beneficiaries next entitled to receive the income and/or principal of the trust estates hereunder.

(d) Should that portion of the net income payable to Mary Claire Dardi and Joseph Dardi at any time be deemed insufficient in the sole and absolute discretion of the Trustee, for the proper care, maintenance, support and education of the beneficiary then entitled to receive such share of the net income, then and in that event the Trustee shall pay to or expend for and on behalf of such beneficiary, in addition to such share of the net income, such portions of the principal of the respective trust estate as he shall deem necessary in his sole and absolute discretion for any of the aforesaid purposes, including all of the needs of that person occasioned or incurred by reason of sickness, accident, hospitaliza-

tion or other emergency, and in the exercise of such discretionary power the trustee shall be liberal.

(e) All income or principal to be paid to any of the beneficiaries named herein shall be paid by the Trustee direct, and only to said beneficiaries. The trustee is not to recognize any transfer, mortgage, pledge, hypothecation, order or assignment of any beneficiary by way of anticipation of any part of the income or principal. The principal and income of the trust estate shall not be subject in any manner to transfer by operation of law unless otherwise herein provided, and shall be exempt from the claims of creditors or other claimants, and from orders, decrees, levies, attachments, garnishments and executions, and other legal or equitable process or proceedings to the fullest extent permissible by law.

(f) The Trustee shall not be required to make an actual division of the trust estate pursuant to any provision of this agreement, except insofar as may be necessary on a whole or partial distribution of the trusts, but in his discretion he may hold, administer and invest the several shares of the trust estate as one or more common funds and may assign undivided interests in said common fund or funds to the several shares and divide the net income therefrom among the beneficiaries thereof proportionately.

Fourth: In addition to the powers granted to the Trustee in this instrument, the Trustee shall have the following powers:

(a) Subject to limitations, if any, states elsewhere in this indenture, the Trustee shall have every right and power in relation thereto and the assets thereof which any unmarried person could have as the absolute and unqualified owner, including full power to conclusively determine that which is income, net or gross, and to so determine that which is income or principal. He shall also have full power to invest and reinvest the assets of the trusts in, or to retain as such so long as he deems advisable, any property, real or personal, of any kind whatsoever, without responsibility for decline in value, regardless of whether such property shall be legal, or of a character appropriate for the investment of trust assets.

(b) The Trustee shall pay out of the gross income of the trust estates, or if said income be insufficient, then the balance thereof out of the principal, all taxes, assessments, insurance, costs, fees and expenses of every kind and nature, incurred or expended in the collection, care, administration, protection or distribution of the trust estates for the payment of which the trust estates and/or the Trustee may become chargeable, including a reasonable compensation to the Trustee for his services as such Trustee.

(c) The Trustee shall have the power, with respect to the trust estates, and upon such terms and in such manner as he may deem advisable, in his sole and absolute discretion, except as hereinafter provided, to sell for cash or upon installment terms, convey, exchange, grant options, convert, improve,

repair, manage, operate, cultivate and control; to lease for terms within or extending beyond the duration of the trusts and for any purpose, including the exploration for and removal of gas, oil and other minerals, with or without order of court; to borrow money, and to encumber or hypothecate by mortgage, deed of trust, pledge or otherwise; to carry insurance of such kind and in such amounts as the Trustee may deem advisable at the expense of the trusts, including public liability insurance for the protection of the Trustee, to compromise, settle or otherwise adjust any claim against or in favor of the trust; to sue for and/or defend for and on behalf of the trust estates as determined by the Trustee, in his sole and absolute discretion; and all costs, attorneys' fees and reasonable compensation to the Trustee in connection therewith shall be a charge against the trust estates, to enforce and collect all notes, mortgages, bonds, deeds of trust or other choses in action at any time constituting a part of the trust estates; to renew or extend the time of payment of any obligation due or becoming due to these trust estates; to foreclose by judicial proceedings or otherwise any security belonging to these trust estates; to invest and reinvest the trust estates or any portion thereof in such securities or other property as the Trustee may deem advisable, in his sole and absolute discretion, except as herein provided, whether or not of the character permitted by law for the investment of trust funds in the State of California; to make, execute and

deliver proxies; to hold title in the name of its nominee; to exercise and/or sell rights, to participate in foreclosures, reorganizations, consolidations, mergers and/or liquidations.

(d) If any beneficiary shall become entitled to any payment of income and/or delivery or transfer of property under the terms and provisions hereof during minority, Trustee may make such payment of income and/or delivery or transfer of property to either parent of such minor beneficiary without the necessity of guardianship proceedings on behalf of such minor beneficiary, and any payment and/or delivery or transfer so made shall relieve the Trustee of and from any and all liability by reason thereof.

(e) Upon any division or partial or final distribution of each trust estate, the said Trustee, in his sole and absolute discretion, shall have the power to partition, allot and distribute such trust estate in undivided interest or in kind, or partly in money and partly in kind, at valuations determined by the Trustee, and to sell such property as the Trustee may deem necessary, to make division or distribution, all as determined by him in the exercise of said discretion.

(f) All dividends payable in a form other than cash, and all liquidating dividends, shall be treated as principal and added to the trust estates so far as permitted by law. The determination by the Trustee as to the allocation between principal and income of any particular dividend shall be binding and conclu-

sive hereunder. The proceeds of sale of rights to subscribe for additional stock shall be treated as principal.

(g) The Trustee may receive any other property from the Donor or from any other person or persons to be held by the Trustee subject to all the terms and conditions of this trust indenture.

(h) Unless specifically limited, all discretion conferred upon the Trustee shall be absolute, and his exercise thereof conclusive on all persons interested in these trusts.

Fifth: The Trustee at any time so acting shall have the right to resign on sixty days' written notice to the beneficiaries of the trusts. In the event of such resignation, or if the Trustee is for any reason unable or unwilling to act as such Trustee, or upon the death of the Trustee, William H. Keesling shall have the right to appoint the successor Trustee.

Sixth: The trusts and each of them are hereby declared to be irrevocable, and no powers of any kind and no incidents of ownership are reserved to the Donor, and in this respect it is expressly declared to be the intent of the Donor to and he hereby does completely divest himself of all right, title and interest of every kind in these trusts and in the assets thereof. This trust indenture shall be construed under the laws of the State of California.

Seventh: The Donor hereby declares that the interest in and to the partnership doing business

under the firm name and style of Mission Company is his sole and separate property.

Eighth: The execution of this instrument by the Trustee shall be and constitute an acceptance by him of the trusts hereby created.

In Witness Whereof, the parties hereto have executed these presents at San Francisco, California, the day and year first hereinabove written.

.....,

Donor.

.....,

Trustee.

State of California,

City and County of San Francisco—ss.

On this day of, 194.., before me,, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared Eugene Engle and John Clifton Ernst, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in the City and County of San Francisco the day and year in this certificate first above written.

.....,

Notary Public, in and for the City and County of San Francisco, State of California.

EXHIBIT "A"

The Mission Company
Balance Sheet

December 31, 1944

Assets

Current Assets

Cash in banks	\$ 9,726.81
Cash on hand	925.57
Inventory	15,786.58
Notes Receivable	2,000.00
Total Current Assets	<u>\$28,438.96</u>

Fixed Assets

Furniture and Fixtures	\$27,742.65
Leasehold improvements	4,360.00
Trucks and automobile	1,985.89
	<u>\$34,088.54</u>
Less: Reserve for Depreciation	7,063.74
Total Fixed Assets	<u>\$27,024.80</u>
Securities:	829.80
Cash Deposits:	2,625.00
Good Will	5,153.42
Total Assets	<u><u>\$64,071.98</u></u>

Liabilities and Capital

Liabilities:

Accounts Payable	\$ 6,761.25
Accrued Taxes	6,641.40
Notes Payable	3,319.42
Total Liabilities	<u>\$16,722.07</u>

Capital:

Umberto Dardi, Capital	\$23,674.95
Eugene J. Engle, Capital	23,674.95
Total Capital	<u>\$47,349.91</u>
Total Liabilities and Capital ...	<u><u>\$64,071.98</u></u>

EXHIBIT G

Release

For valuable consideration receipt whereof is hereby acknowledged, the undersigned, for himself, his heirs, executors, administrators and assigns, does hereby release and discharge Eugene Engle of and from any and all claims, demands, damages, liabilities, sums of money, and causes of action which the undersigned may have had or now has or hereafter may have arising out of or by virtue of that certain promissory note dated April 30, 1944, executed by said Eugene Engle to Virgil D. Dardi in the face amount of \$150,000, together with interest thereon at the rate of three per cent (3%); and the undersigned further agrees that he will cancel said note and that the same shall be of no further force and effect.

Dated: May 6, 1947.

/s/ V. DARDI.

Witnessed:

/s/ R. W. STEWART.

[Endorsed]: Filed April 11, 1957.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above-entitled action was tried on April 15, 1957, before the court sitting without a jury, Lloyd H. Burke, Lynn J. Gillard and Joseph O. Greaves appearing for the plaintiff, United States of America, and J. Richard Johnston appearing for the defendants, The Mission Company, Virgil D. Dardi, individually and as executor of the Estate of Umberto Dardi, and Olga Paula, as trustee of trust for Joseph Dardi and as trustee of trust for Mary Claire Elevita Dardi.

Documentary evidence having been introduced and the court now being sufficiently advised and informed in the premises makes the following Findings of Fact and draws the following Conclusions of Law:

Findings of Fact

1. At all times hereinafter mentioned, the plaintiff was, and now is, a sovereign body politic.
2. This is an action arising under the laws of the United States providing for the internal revenue and the collection thereof.
3. This action has been authorized by the Attorney General of the United States at the request of the Commissioner of Internal Revenue.
4. The Mission Company is a corporation organized under the laws of the State of California and

at all times relevant to this action was doing business at 2200 Mission Street, San Francisco, California.

5. The defendants, Virgil D. Dardi and Olga Paula, are residents of San Francisco, California, or other places within the jurisdiction of this Court.

6. The Mission Company was incorporated under the laws of the State of California in January, 1941, under the name of Dardi and Company; in April, 1941, said corporate name was changed to R. J. Howell, Inc.; in November, 1942, said corporate name was changed to The Mission Company.

7. The Mission Company filed corporate income tax returns for the calendar year 1942 and for the period January 1, 1943, to June 30, 1943; said returns were filed by Virgil D. Dardi as president and Umberto Dardi as vice president.

8. Income and excess profits taxes were assessed against The Mission Company as follows:

Year	Tax	Amt. Assessed	Post War Credit	Amt. Owed
1942	E.P.	\$ 8,117.06	\$ 811.71	\$ 7,305.35
1942	I.T.	14.50		369.96
	Int.	3.47		
	DVEP	283.99		
	Int.	68.00		
1943	E.P.	6,305.04	630.50	5,674.54
1943	I.T.	726.05		2,633.75
	Int.	130.28		
	DVEP	1,507.01		
	Int.	270.41		
				<hr/> \$15,983.60

The assessment list pertaining to the above tax liabilities was signed by the Commissioner of Internal Revenue on October 10, 1947, and received by the Collector of Internal Revenue at San Francisco on October 13, 1947, on which date a lien of the plaintiff, United States of America, arose on all property and rights to property of The Mission Company; said assessment was within the applicable statute of limitations for assessment of such taxes as duly extended by Virgil D. Dardi as president of The Mission Company; notice and demand was made on The Mission Company on October 17, 1947; no part of the \$15,983.60, plus interest, due to the United States of America for the above taxes has been paid; waivers were executed by Virgil D. Dardi as president of The Mission Company on October 21, 1952, extending the time of collection of the above tax liabilities by distraint or by proceedings in court until December 31, 1956; notices of Federal tax liens were filed pursuant to Section 3672 of the Internal Revenue Code of 1939 for the tax liabilities asserted herein in the County of San Francisco, California, on January 9, 1948, in the amount of \$19,491.39.

9. No waiver extending the time of collection of the above tax liabilities by distraint or by proceedings in court has ever been executed by Virgil D. Dardi, either individually or as executor of the estate of Umberto Dardi, or by Olga Paula as trustee of the trust for Joseph Dardi or as trustee of the trust for Mary Claire Elevita Dardi.

10. On June 30, 1943, defendant Virgil D. Dardi and Umberto Dardi each received from The Mission Company one-half of its assets and said Virgil D. Dardi and Umberto Dardi assumed the liabilities of said corporation as shown on its books at that date. On June 30, 1943, defendant Virgil D. Dardi and Umberto Dardi formed a partnership known as The Mission Co., to which they transferred the assets which they had received and the liabilities which they had assumed from the defendant The Mission Company. Said partnership thereafter continued to operate the business known as the Cigar Box Restaurant.

11. That at the time of the said transfer of all assets of The Mission Company to Virgil and Umberto Dardi, said assets had a total value as evidenced by the books of the corporation, The Mission Company, and the partnership of \$38,137.65 and that said partnership of Virgil Dardi and Umberto Dardi did assume liabilities totalling \$22,311.65.

12. On April 30, 1944, Virgil D. Dardi did transfer his one-half interest in the partnership known as The Mission Company to Eugene Engle for the sum of \$150,000 evidenced by a promissory note to be paid as follows:

\$27,900 on or before December 31, 1944;
\$30,000 on or before December 31, 1945;
\$30,000 on or before December 31, 1946;
Balance on or before December 31, 1947.

That said transaction was a bona fide transaction entered into in good faith by both parties.

13. Eugene Engle paid Virgil D. Dardi the sum of \$27,900.00 in 1944, in payment of the first installment due on said note, and Virgil D. Dardi reported the receipt of this payment in his individual Federal income tax return for the year 1944.

14. On or about January 1, 1945, Eugene Engle transferred his 50% partnership interest in The Mission Company to John Clifton Ernst, as trustee for Mary Claire Dardi and Joseph Dardi, the two minor children of Virgil D. Dardi. This transfer was evidenced by a trust indenture which was duly executed by the parties. Pursuant to this trust indenture, the trustee made payments to Virgil D. Dardi in the amounts set forth below, and Virgil D. Dardi reported the receipt of such payments in his individual Federal income tax returns for the respective years in which the payments were made:

1945	\$21,169.06
1946	\$38,175.00

15. On or about May 6, 1947, Virgil D. Dardi executed a release, discharging Eugene Engle from any further liability under his note of April 30, 1944.

16. Umberto Dardi died on or about April, 1948.

17. The defendant, Virgil D. Dardi, as executor of the Estate of Umberto Dardi, and the defendant, Olga Paula, as trustee of the trusts for Joseph and Mary Claire Elevita Dardi, are operating the Cigar Box Restaurant as partners or co-venturers.

18. The United States has withdrawn all claim against the defendant Olga Paula, as trustee of the trusts for Joseph and Mary Claire Elevita Dardi.

Conclusions of Law

1. That the Mission Company, a corporation, is liable to the United States for the amount of \$15,983.60, plus accrued interest at a rate of 6 per cent thereon from October 17, 1947, until the date of payment.

2. That the agreement of October 21, 1952, between The Mission Company and the Commissioner of Internal Revenue, extending the time for collection of the above tax liabilities, extended the time for proceeding in court against the defendant Virgil D. Dardi individually and as executor of the estate of Umberto Dardi, and this action is therefore not barred by the statute of limitations as to said Virgil D. Dardi, either individually or as executor of said estate.

3. That the transfer of the assets of The Mission Company to Virgil D. Dardi and Umberto Dardi rendered the taxpayer, The Mission Company, insolvent and unable to pay its taxes.

4. That neither Virgil D. Dardi nor Umberto Dardi paid any consideration to The Mission Company for said assets, except for the assumption of the liabilities of The Mission Company.

5. That the defendants Virgil D. Dardi and Umberto Dardi did each become liable to the United

States as transferees of The Mission Company in the amount of \$7,913.00, the net value of the assets received.

Dated: June 10, 1957.

/s/ MICHAEL J. ROCHE,
United States District Judge.

Approved as to form:

/s/ J. RICHARD JOHNSTON,
Attorney for Defendants.

Lodged May 27, 1957.

[Endorsed]: Filed June 10, 1957.

In the District Court of the United States, for the
Northern District of California, Southern Division

No. 34297

UNITED STATES OF AMERICA,
Plaintiff,

vs.

THE MISSION COMPANY, VIRGIL D. DARDI,
Individually and as Executor of the Estate of
UMBERTO DARDI; and OLGA PAULA, as
Trustee of Trust for JOSEPH DARDI and as
TRUSTEE of Trust for MARY CLAIRE
ELEVITA DARDI,
Defendants.

JUDGMENT

This cause came on to be heard on April 15, 1957, and duly submitted on May 6, 1957, it was argued by Counsel and thereupon, upon consideration thereof, it is ordered, adjudged and decreed as follows, viz.:

1. That the United States shall have judgment against Virgil D. Dardi in the amount of \$7,913.00.

2. That the United States shall have judgment against the Estate of Umberto Dardi in the amount of \$7,913.00.

3. That the United States shall have judgment against The Mission Company, a corporation, in the amount of \$15,983.60, plus accrued interest at a rate of 6 per cent thereon from October 17, 1947, until the date of payment.

4. That the United States shall have its costs.

5. That the action as to defendant Olga Paula, as trustee of the trusts of Joseph and Mary Claire Elevita Dardi, is dismissed.

Dated: June 10, 1957.

/s/ MICHAEL J. ROCHE,

United States District Judge.

Approved as to form.

/s/ J. RICHARD JOHNSTON,

Attorney for Defendants.

Lodged May 27, 1957.

[Endorsed]: Filed June 10, 1957.

Entered June 11, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Virgil D. Dardi, defendant above named, hereby appeals, both individually and as Executor of the Estate of Umberto Dardi, to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in the above-entitled action on June 11, 1957.

Dated: July 8, 1957.

/s/ J. RICHARD JOHNSTON,
Attorney for Said Defendant.

[Endorsed]: Filed July 10, 1957.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO
RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and constitute the record on appeal herein as designated by the attorneys for the appellants:

Excerpt from Docket Entries.

Complaint.

Answer of Virgil D. Dardi, Individually.

Answer of Virgil D. Dardi, Executor Estate Umberto Dardi.

Amended Answer of Virgil D. Dardi, Individually.

Amended Answer of Virgil D. Dardi, Executor
Estate Umberto Dardi.

Pretrial order.

Motion of Defendant for Judgment on Pleadings.

Order Denying Motion for Judgment on Plead-
ings.

Stipulation of Facts with Exhibits Attached.

Findings of Fact and Conclusions of Law.

Judgment.

Stay of Judgment Pending Appeal.

Notice of Appeal.

Bond on Appeal.

Appellants' Designation of Record on Appeal.

In Witness Whereof, I have hereunto set my hand
and affixed the seal of said District Court this 1st
day of August, 1957.

[Seal]

C. W. CALBREATH,
Clerk.

By /s/ MARGARET P. BLAIR,
Deputy Clerk.

[Endorsed]: No. 15655. United States Court of
Appeals for the Ninth Circuit. Virgil D. Dardi, In-
dividually and as Executor of the Estate of Umberto
Dardi, Appellant, vs. United States of America, Ap-

appellee. Transcript of Record. Appeal From the United States District Court for the Northern District of California, Southern Division.

Filed: August 1, 1957.

Docketed: August 6, 1957.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit
No. 15655

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE MISSION COMPANY, VIRGIL D. DARDI,
Individually and as Executor of the Estate
of UMBERTO DARDI; and OLGA PAULA,
as Trustee of Trust for JOSEPH DARDI and
as Trustee of Trust for MARY CLAIRE
ELEVITA DARDI,

Defendants.

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY

Appellant intends to rely on the following point on appeal:

The suit was barred by the statute of limitations as against all defendants except The Mission Company.

/s/ J. RICHARD JOHNSTON,
Attorney for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 6, 1957.